IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

MFA.No. 565 of 2001()

OP(MV).807/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT: PETITIONER

MALIKA,
S/O. HYDRU, POOLAM THARAKAL HOUSE,
NJAMANENGAD POST, THRISSUR.

BY ADV. SRI.NELSON J.MANAYIL
SRI.BINO BABU R.

RESPONDENTS: RESPONDENTS
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1. **STATE OF KERALA,**
REP.BY CHIEF SECRETARY,
GOVERNMENT OF KERALA, TRIVANDRUM.

2. **K.V.SADANANDAN,**
KADALIKKATIL HOUSE,
AVITTATHUR, THRISSUR.

3. **DIRECTOR GENERAL OF POLICE, HEAD QUARTERS, TRIVANDRUM.**

4. **UNITED INDIA INSURANCE CO. LTD., BRANCH THRISSUR**

R1 & R3 BY GOVERNMENT PLEADER SRI.NOBLE MATHEW
R4 BY ADV. SRI.M.A.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/ 12 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No. 565 of 2001

Dated this the 7th day of December, 2007

Judgment

Koshy,J.

Appellant/petitioner suffered serious injuries in a motor accident on 14.1.1994. He was riding a scooter bearing registration No.KL8 - 4432 from Kunnamkulam to Kochery. A police jeep bearing registration No. KCV 1288 came from behind and overtook the scooter and, according to the appellant, as a result of the accident, left side of the bumper of the jeep got hooked on the handle of the scooter and the scooter was dragged forward and the appellant was thrown away and sustained serious injuries. Both drivers filed claim petitions O.P.(M.V.) Nos.806 and 807 of 1994 and both cases were heard together and passed a common award. The tribunal found that the accident occurred due to negligence on the part of the appellant also which was apportioned as 60% and only 40% of the compensation calculated was awarded to him. Appeal filed against the above finding in O.P.(M.V.) No.806 of 1994 was numbered as M.F.A. No.286 of 2001 and we have held that both drivers were equally negligent as follows:

> "2. In paragraph 17 of the award, the Tribunal discussed the matter regarding contributory negligence in a detailed manner. The tribunal has not accepted the contention of the petitioner that the accident occurred while the scooter he was riding was hit by the jeep from behind. A reading of the evidence would show that the accident occurred due to head-on collision. The police charge sheeted both the drivers. But the tribunal fixed more negligence on the part of the appellant because of the position of the vehicle in the scene mahazar. Scene mahazar was taken after the accident. The exact spot of accident cannot be found out as the scooter being a small vehicle is likely to be moved in view of the impact of the accident. The offending vehicle was the police jeep and was the bigger vehicle. The contention of the appellant is that the police has written the mahazar in such a way so as to avoid their liability and that is why the police had charge sheeted him. However, from the scene mahazar, it can be seen that there was head-on collision and, therefore, we are of the opinion that the negligence has to be apportioned equally between both the drivers."

Since there is 50% negligence on the part of the appellant, only 50% of the compensation calculated can be paid to him. Ext.B1 wound certificate would show that claimant had sustained a fracture to right humerus with compound fracture to right patella. Ext.B2 is the discharge summary which would go to show that he was treated in the hospital till 5.2.1994. Patellotomy was done under general

anesthesia. Open reduction and internal fixation was done for right humerus. Bone grafting was also done. With regard to the disability, Ext.B3 certificate shows that he had 10% disability. The tribunal did not accept the disability certificate as the doctor was not examined. We are of the view that there is no reason for discarding the disability certificate especially due to fracture of right femur and compound fracture of right patella. There was difficulty in movement of knee and he will continue to have pain and difficulties in the knee movement. However, due to absence of clear data regarding his age instead of Rs.15,000/- at least Rs.20,000/- ought to have fixed as compensation for disability. Compensation under other heads granted by the tribunal were just and reasonable. The tribunal calculated compensation of Rs.58,500/- against a claim of Rs.3,40,250/- and we have held that claimant is entitled to Rs.5,000/- more for disability compensation. Thus, total amount of compensation is Rs.63,500/-. 50% of the amount payable is Rs.31,750/-. The tribunal has awarded only Rs.23,400/- only. Hence, appellant is entitled to an additional amount of Rs.8,350/- which should be paid by the fourth respondent insurance company with 7.5 % from the date of application till the

date of deposit. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 565 of 2001

Judgment

Dated:7th December, 2007